

# HOUSE . . . . . No. 1664

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By Mr. O’Flaherty of Chelsea, petition of Eugene L. O’Flaherty  
relative to drunk driving and driving under the influence. The Judiciary.

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## The Commonwealth of Massachusetts

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In the Year Two Thousand and Seven.

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AN ACT TO PROTECT THE CITIZENS OF THE COMMONWEALTH FROM DRUNK  
DRIVERS.

*Be it enacted by the Senate and House of Representatives in General  
Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 1 of Chapter 90 of the General Laws, as  
2 appearing in the 2004 Official Edition, is hereby amended by  
3 including the following definitions:

4 **Blood alcohol content:** The amount of alcohol present in a 100  
5 milliliter volume of blood or 210 milliliters of breath. Blood alcohol  
6 content is also known as: blood alcohol level, blood alcohol  
7 concentration, and BAC.

8 **Drugs or other substance:** Marijuana, narcotic drugs, depressants  
9 or stimulant substances, all as defined in section 1 of chapter 94C, or  
10 vapors of glue.

11 **Ignition interlock device:** A breath alcohol sensing instrument  
12 designed to be mounted in an automobile and connected to the igni-  
13 tion key switching system in a way that prevents the vehicle from  
14 starting unless the driver first provides a breath sample. These  
15 devices contain an instrument to measure the alcohol content of a  
16 deep lung breath sample. If the measured blood alcohol content is at  
17 or above a set level, the ignition is locked and the vehicle will not  
18 start. For purposes of this chapter, the registrar will certify each  
19 model or device approved for use.

20 **Minimum mandatory:** The term of a sentence that shall not be  
21 reduced or suspended nor shall any person be eligible for probation,  
22 parole, furlough, or receive any deduction for good conduct during  
23 that term.

24 **Operating under the influence offense:** Any conviction, nolo  
25 contendere plea, continuation without a finding with an assignment  
26 to an alcohol, drug or substance abuse education treatment program  
27 for operating under the influence under chapter 90, chapter 90A,  
28 chapter 90B, or chapter 265, or of a like offense of operating under  
29 the influence from another jurisdiction.

30 **Prior under the influence offense:** Any conviction, nolo  
31 contendere plea, or continuation without a finding with an assign-  
32 ment to an alcohol, drug or substance abuse education treatment  
33 program for operating under the influence under chapter 90,  
34 chapter 90A, chapter 90B, or chapter 265, or of a like offense of  
35 operating under the influence from another jurisdiction, where the  
36 findings, judgment, or adjudication date by the court precedes the  
37 date of offense for which he is now charged.

38 **Public way:** Any street or highway that is open to the public and is  
39 controlled and maintained by some level of government, or in a  
40 place to which the public has a right of access, or in a place to which  
41 members of the public have access as invitees or licensees.

42 **Under the influence:** (1) Having ingested enough liquor, mari-  
43 juana, narcotic drugs, depressants or stim-  
44 ulant substances, all as defined in section  
45 1 of chapter 94C, or vapors of glue to  
46 diminish one's capacity or ability to drive  
47 safely; or  
48 (2) Having a blood alcohol content of .08% or  
49 above.

1 SECTION 2.

2 Section 23 of Chapter 90 of the General Laws, as appearing in the  
3 2004 Official Edition, is hereby amended by striking lines 1 through  
4 94 and replacing it with the following:

5 (1) No person shall operate a motor vehicle with a revoked  
6 license or right to operate after being notified by the Registry of  
7 Motor Vehicles of such revocation.

8 (2) No person shall operate a motor vehicle with a revoked certifi-  
9 cate of registration.

10 (3) No person shall allow another to operate a motor vehicle with  
11 a revoked certificate of registration.

12 (4) No person with intent to conceal his identity shall present to  
13 an officer authorized to make arrests a license issued to another  
14 person.

15 (a) A person convicted under subsection (1), (2), (3) or (4) of  
16 this section shall be punished as follows:

17 (1) First offense: The defendant shall be imprisoned in a jail  
18 or house of correction for not more than 10 days, or fined not less  
19 than \$500 but not more than \$1000, or both.

20 (2) Subsequent offense: The defendant shall be imprisoned  
21 in a jail or house of correction for not less than 60 days but not more  
22 than 1 year.

23 (b) Upon a conviction under subsection (1), (2), (3), or (4), of  
24 this section the registrar shall extend said revocation of the license or  
25 right to operate for an additional 60 days.

26 (5) No person shall attach or permit to be attached to a motor  
27 vehicle or trailer a number plate assigned to another motor vehicle or  
28 trailer.

29 (6) No person shall obscure or permit to be obscured the figures  
30 on any number plate attached to a motor vehicle or trailer.

31 (7) No person shall fail to display a number plate and registration  
32 number duly assigned to a motor vehicle or trailer with the intent to  
33 conceal the identity of such motor vehicle or trailer.

34 (a) A person convicted under subsection (5), (6), or (7) of this  
35 section shall be imprisoned in a jail or house of correction for not  
36 more than 10 days, or fined not more than \$100, or both.

37 (b) Upon a conviction under subsection (5), (6), or (7) of this  
38 section the registrar shall extend said revocation of the license or  
39 right to operate for an additional 60 days.

40 (8) No person shall operate a motor vehicle with a revoked  
41 license or right to operate due to being a habitual traffic offender  
42 pursuant to section 22F of chapter 90 after being notified by the  
43 Registry of Motor Vehicles of such revocation.

44 (a) A person convicted under this subsection shall be impris-  
45 oned in a jail or house of correction for not more than 2 years or  
46 fined not less than \$500 but not more than \$5000, or both.

47 (b) Upon a conviction under this subsection the registrar shall  
48 extend said revocation of the license or right to operate for an addi-  
49 tional 60 days.

50 (9) No person shall operate a motor vehicle with a revoked  
51 license or right to operate due to a prior operating under the influ-  
52 ence offense under chapter 90, 90B, 90F, or 265 after being notified  
53 by the Registry of Motor Vehicles of such revocation.

54 (a) A person convicted under this subsection shall be impris-  
55 oned in a jail or house of correction for a minimum mandatory term  
56 of 60 days but not more than 2½ years and fined not less than \$1,000  
57 but not more than \$10,000. No case commenced under this subsec-  
58 tion shall be continued without a finding or placed on file, or sub-  
59 ject to the provisions of section 87 of chapter 276.

60 (b) Upon a conviction under this subsection the registrar shall  
61 extend said revocation of the license or right to operate for an addi-  
62 tional 1 year.

63 (10) No person shall operate a motor vehicle under the influence  
64 with a revoked license or right to operate due to a prior operating  
65 under the influence offense after being notified by the Registry of  
66 Motor Vehicles of such revocation.

67 (a) A person convicted under this subsection shall be impris-  
68 oned in a jail or house of correction for a minimum mandatory term  
69 of 1 year but not more than 2½ years and fined not less than \$2,500  
70 but not more than \$10,000. No case commenced under this subsec-  
71 tion shall be continued without a finding, or placed on file, or sub-  
72 ject to the provisions of section 87 of chapter 276.

73 (b) Upon a conviction under this subsection the registrar shall  
74 extend said revocation of the license or right to operate for an addi-  
75 tional 1 year.

76 (c) A sentence imposed under this subsection shall be served  
77 consecutively to and not concurrently with any other sentence or  
78 penalty.

79 (11) A certificate of the registrar or his authorized agent indi-  
80 cating that: (1) a license or right to operate has not been restored; or  
81 (2) a certificate of registration has not been restored; or (3) a new  
82 license to operate has not been issued; or (4) a new certificate of reg-

83 istration has not been issued shall be admissible as evidence in any  
84 court of the commonwealth to prove the facts certified to therein.

85 A certificate of a clerk of court that a person's license or right to  
86 operate a motor vehicle was revoked for a period of time shall be  
87 admissible as prima facie evidence in any court of the common-  
88 wealth to prove the facts certified to therein.

89 (12) In no case shall a person who fails to pay an administrative  
90 reinstatement fee be prosecuted for operating after revocation of a  
91 license.

92 (13) Upon a finding by the registrar that a person with a revoked  
93 license or right to operate, did operate a vehicle registered to  
94 another, the registrar shall, after hearing, revoke the certificate of  
95 registration of said motor vehicle for up to 30 days. Immediately,  
96 upon revocation, the certificate of registration and the number plates  
97 shall be surrendered to the registrar.

1 SECTION 3.

2 Section 24, 24A, 24B, 24D, 24E, 24F, 24G, 24H, 24I, 24J, 24K,  
3 24L, 24M, 24N, 24O, 24P, 24Q, 24R, 24S, 24T, 24U, 24V, 24W, and  
4 24X of Chapter 90 of the General Laws, is hereby amended by  
5 deleting each section and replacing it with the following:

6 **Chapter 90, § 24 — False statements in an application.**

7 (1) No person shall falsely make, steal, alter, forge, counterfeit, or  
8 procure a learner's permit, a license to operate a motor vehicle, an  
9 identification card issued under section 8E of this chapter, a certifi-  
10 cate of registration of a motor vehicle or trailer, a disabled parking  
11 permit, a registration plate, a registry of motor vehicles medical  
12 clearance form, a medical waiver application for intrastate com-  
13 merce, a medical waiver card, a registration sticker or an inspection  
14 sticker.

15 (2) No person shall assist another to falsely make, steal, alter,  
16 forge, counterfeit, or procure a learner's permit, a license to operate a  
17 motor vehicle, an identification card issued under section 8E of this  
18 chapter, a certificate of registration of a motor vehicle or trailer, a  
19 disabled parking permit, a registration plate, a registry of motor  
20 vehicles medical clearance form, a medical waiver application for  
21 intrastate commerce, a medical waiver card, a registration sticker or  
22 an inspection sticker.

23 (3) No person shall forge or use without authority the signature, a  
24 facsimile of the signature, or validating signature stamp of the regis-  
25 trar or a deputy registrar upon a genuine, falsely made, stolen,  
26 altered, forged, counterfeited or procured learner's permit, license to  
27 operate a motor vehicle, identification card issued under section 8E  
28 of this chapter, certificate of registration of a motor vehicle or  
29 trailer, a disabled parking permit, a registration plate, a registry of  
30 motor vehicles medical clearance form, a medical waiver application  
31 for intrastate commerce, a medical waiver card, a registration sticker  
32 or an inspection sticker.

33 (4) No person shall have in his possession, utter, publish as true,  
34 or in any way make use of a falsely made, stolen, altered, forged,  
35 counterfeited, or procured learner's permit, license to operate a  
36 motor vehicle, identification card issued under section 8E of this  
37 chapter, certificate of registration of a motor vehicle or trailer, a dis-  
38 abled parking permit, a registration plate, a registry of motor vehi-  
39 cles medical clearance form, a medical waiver application for  
40 intrastate commerce, a medical waiver card, a registration sticker or  
41 an inspection sticker.

42 (5) No person shall have in his possession, utter, publish as true,  
43 or in any way make use of a falsely made, stolen, altered, forged,  
44 counterfeited, or procured signature, facsimile of the signature, or  
45 validating signature stamp of the registrar or a deputy registrar.

46 (a) A person convicted under subsection (1), (2), (3), (4), or (5)  
47 of this section shall be imprisoned in a jail or house of correction for  
48 not more than 2 years or state prison for not more than 5 years and  
49 fined \$500.

50 (b) Upon a conviction under this section the registrar shall  
51 revoke the license or right to operate for 1 year. No appeal or  
52 motion for a new trial shall stay the revocation of the license or right  
53 to operate.

54 (6) No person shall make any false statement in an application for  
55 a learner's permit or license to operate a motor vehicle.

56 (7) No person shall make any false statement in an application for  
57 a registration of a motor vehicle.

58 (8) No person shall loan his learner's permit or license to operate  
59 a motor vehicle to another.

60 (a) A person convicted under subsection (6), (7), or (8) of this  
61 section shall be imprisoned in a jail or house of correction for not

62 less than 2 weeks but not more than 2 years, or fined not less than  
63 \$20 but no more than \$200, or both.

64 (b) Upon a conviction under subsection (6), (7), or (8) of this  
65 section the registrar shall revoke the license or right to operate as  
66 follows:

67 (1) First offense: 60 days

68 (2) Subsequent offense within 3 years: 1 year

69 (c) A summons may be issued instead of a warrant for arrest  
70 upon a complaint for a violation if there is reason to believe the  
71 defendant will appear before the court.

72 **Chapter 90, § 24A — Operation of a motor vehicle while**  
73 **drinking alcoholic beverage from open container.**

74 (9) No person shall possess an open container of alcoholic bev-  
75 erage in the passenger area of any motor vehicle while on a public  
76 way.

77 (10) A person convicted under this section shall be fined not less  
78 than \$100 but not more than \$500.

79 (11) These words, as used in this section, have the following  
80 meaning:

81 (a) Open container — any bottle, can or other receptacle used to  
82 contain liquid that has been opened or has a broken seal, or the con-  
83 tents of which have been partially removed or consumed provided;  
84 however, that a bottle resealed pursuant to section 12 of chapter 138  
85 shall not be considered an open container.

86 (b) Passenger area — the area designed to seat the driver and the  
87 passengers while the motor vehicle is in operation and any area that  
88 is readily accessible to the driver or a passenger while in a seated  
89 position including, but not limited to, the glove compartment. But in  
90 a motor vehicle that is not equipped with a trunk, the passenger area  
91 shall not include a locked glove compartment, the area behind the  
92 last upright seat, or an area not normally occupied by the driver or a  
93 passenger.

94 (12) This section shall not apply to passengers of a motor vehicle  
95 designed, maintained and used for the transportation of persons for  
96 compensation, or the living quarters of a house coach or house  
97 trailer.

98 (13) Notwithstanding the provisions of this section, the driver of  
99 any motor vehicle, including a house coach or house trailer, shall not  
100 possess an open container of alcoholic beverage.

101     **Chapter 90, § 24B — Negligent/Reckless operation**

102     (14) No person shall operate a motor vehicle on a public way neg-  
103 ligently or recklessly so that the lives or safety of the public might  
104 be endangered.

105     (15) A person convicted under this section shall be imprisoned in  
106 a jail or house of correction for not less than 2 weeks but not more  
107 than 2 years or fined not less than \$20 but not more than \$200 dol-  
108 lars, or both.

109     (16) Upon a conviction under this section the registrar shall  
110 revoke the license or right to operate as follows:

111         (a) First offense: 60 days

112         (b) Subsequent offense within 3 years: 1 year

113     No appeal or motion for a new trial shall stay the revocation of  
114 the license or right to operate.

115     (17) Upon a conviction of this subsection, if it appears by the  
116 records of the registrar that the person convicted is the owner of a  
117 motor vehicle or has exclusive control of any motor vehicle as a  
118 manufacturer or dealer or otherwise, the registrar may revoke the  
119 certificate of registration of any or all motor vehicles owned or  
120 exclusively controlled by the person.

121     (18) Upon a disposition under this section the court shall assess a  
122 \$250 fee to the person. The court shall deposit \$125 of the \$250  
123 collected under this assessment into the Head Injury Treatment  
124 Services Trust Fund. The remaining \$125 shall be deposited into the  
125 General Fund. The fee may be reduced or waived if the court makes  
126 written findings that payment would cause the person severe finan-  
127 cial hardship. If the court sentences the person to a correctional  
128 facility the outstanding assessment shall be noted on the mittimus.

129     (19) A summons may be issued instead of a warrant for arrest  
130 upon a complaint for a violation if there is reason to believe the  
131 defendant will appear before the court.

132     **Chapter 90, § 24C (1) — Leaving the scene after causing**  
133 **property damage.**

134     (20) No person operating a motor vehicle on a public way shall  
135 knowingly collide with or otherwise cause injury to any other  
136 vehicle or property without stopping and making known his name,  
137 residence and the registration number of his motor vehicle.



138 (a) A person convicted of this subsection shall be imprisoned in  
139 a jail or house of correction for not less than 2 weeks but not more  
140 than 2 years or fined not less than \$20 but not more than \$200, or  
141 both.

142 (b) Upon a conviction under this subsection the registrar shall  
143 revoke the license or right to operate as follows:

144 (1) First offense: 60 days

145 (2) Subsequent offense within 3 years: 1 year

146 No appeal or motion for a new trial shall stay the revocation of  
147 the license or right to operate.

148 (c) Upon a conviction of this subsection, if it appears by the  
149 records of the registrar that the person convicted is the owner of a  
150 motor vehicle or has exclusive control of any motor vehicle as a  
151 manufacturer or dealer or otherwise, the registrar may revoke the  
152 certificate of registration of any or all motor vehicles owned or  
153 exclusively controlled by the person.

154 (d) A summons may be issued instead of a warrant for arrest  
155 upon a complaint for a violation if there is reason to believe the  
156 defendant will appear before the court.

157 **Chapter 90, § 24C (2) — Leaving the scene after causing**  
158 **personal injury.**

159 (21) No person operating a motor vehicle on a public way shall  
160 knowingly collide with or otherwise cause injury to any person  
161 without stopping and making known his name, residence and the  
162 register number of his motor vehicle.

163 (a) A person convicted of this subsection shall be imprisoned in  
164 a jail or house of correction for not less than 6 months but not more  
165 than 2 years and fined not less than \$500 but not more than \$1,000.  
166 No case commenced under this subsection shall be continued  
167 without a finding or placed on file or subject to the provisions of  
168 section 87 of chapter 276.

169 (b) Upon a conviction of this subsection the registrar shall  
170 revoke the license or right to operate as follows:

171 (1) First offense: 1 year

172 (2) Subsequent offense: 2 years

173 No appeal or motion for a new trial shall stay the revocation of  
174 the license or right to operate.

175 (c) Upon a conviction of this subsection, if it appears by the  
176 records of the registrar that the person convicted is the owner of a  
177 motor vehicle or has exclusive control of any motor vehicle as a  
178 manufacturer or dealer or otherwise, the registrar may revoke the  
179 certificate of registration of any or all motor vehicles owned or  
180 exclusively controlled by the person.

181 **Chapter 90, § 24C (3) — Leaving the scene after causing**  
182 **death.**

183 (22) No person operating a motor vehicle on a public way shall  
184 knowingly collide with or otherwise cause injury to any person,  
185 resulting in death, without stopping and making known his name,  
186 residence and the register number of his motor vehicle.

187 (a) A person convicted under this subsection shall be impris-  
188 oned in a jail or house of correction for a minimum mandatory 1  
189 year but not more than 2½ years or state prison for not less than 2½  
190 but not more than 10 years with a minimum mandatory term of 1  
191 year and fined not less than \$1,000 but not more than \$5,000. No  
192 case commenced under this subsection shall be continued without a  
193 finding or placed on file or subject to the provisions of section 87 of  
194 chapter 276.

195 (b) Upon a conviction of this subsection the following license  
196 loss shall apply:

197 (1) First offense: 3 years

198 (2) Subsequent offense: 10 years

199 No appeal or motion for a new trial shall stay the revocation of  
200 the license or right to operate.

201 (c) Upon a conviction of this subsection, if it appears by the  
202 records of the registrar that the person convicted is the owner of a  
203 motor vehicle or has exclusive control of any motor vehicle as a  
204 manufacturer or dealer or otherwise, the registrar may revoke the  
205 certificate of registration of any or all motor vehicles owned or  
206 exclusively controlled by the person.

207 **Chapter 90, § 24D — Operating under the influence of**  
208 **intoxicating liquor or other substances.**

209 (23) No person shall operate a motor vehicle upon any public way  
210 while under the influence of intoxicating liquor, drugs, or other sub-  
211 stances as defined in section 1 of chapter 90.

212 (24) A person convicted under subsection (1) of this section shall  
213 be punished as follows:

214 (a) First Offense: If there is no prior operating under the  
215 influence offense, the defendant shall be imprisoned in a jail or  
216 house of correction for not more than 2½ years or fined not less than  
217 \$500 but no more than \$5,000, or both.

218 (b) Second Offense: If there is 1 prior operating under the influ-  
219 ence offense, the defendant shall be imprisoned in a jail or house of  
220 correction for a minimum mandatory term of 30 days but not more  
221 than 2½ years and fined not less than \$600 but not more than  
222 \$10,000.

223 (c) Third Offense: If there are 2 prior operating under the influ-  
224 ence offenses, the defendant shall be imprisoned in a jail or house of  
225 correction for not less than 150 days but not more than 2½ years, or  
226 state prison for not less than 2 ½ years but not more than 5 years  
227 with a minimum mandatory term of 150 days and fined not less than  
228 \$1,000 but not more than \$15,000.

229 (d) Fourth Offense: If there are 3 prior operating under the  
230 influence offenses, the defendant shall be imprisoned in a jail or  
231 house of correction for not less than 2 years but not more than 2½  
232 years, or state prison for not less than 2½ years but not more than 5  
233 years with a minimum mandatory term of 1 year and fined not less  
234 than \$1,500 but not more than \$25,000.

235 (e) Fifth or Subsequent Offense: If there are 4 or more prior  
236 operating under the influence offenses, the defendant shall be  
237 imprisoned in a jail or house of correction for not less than 2½ years,  
238 or be imprisoned in the state prison for not less than 2½ years but  
239 not more than 5 years with a minimum mandatory term of 2 years  
240 and fined not less than \$2,000 but not more than \$50,000.

241 (f) Upon a disposition under this section the court shall assess a  
242 \$250 fee to the person. The court shall transmit \$125 of the \$250  
243 collected under this assessment to the state treasurer to be deposited  
244 into the Head Injury Treatment Services Trust Fund. The remaining  
245 \$125 shall be deposited into the General Fund. The assessment may  
246 be reduced or waived if the court makes written findings that  
247 payment would cause the person severe financial hardship. If the  
248 court sentences the person to a correctional facility the outstanding  
249 assessment shall be noted on the mittimus.

250 (g) Upon a disposition under this section the court shall assess a  
251 \$50 fee to the person. The court shall transmit the \$50 to the state  
252 treasurer to be deposited into the Victims of Drunk Driving Trust  
253 Fund. The assessment shall not be subject to waiver by the court for  
254 any reason. If the court sentences the person to a correctional  
255 facility the outstanding assessment shall be noted on the mittimus.

256 (h) In any prosecution commenced pursuant to this section,  
257 introduction into evidence of a prior conviction or a prior finding of  
258 sufficient facts by either certified attested copies of original court  
259 papers, or certified attested copies of the defendant's biographical  
260 and informational data from records of the department of probation,  
261 any jail or house of correction, the department of correction, or the  
262 registry of motor vehicles, shall be prima facie evidence that the  
263 defendant before the court has been convicted previously or assigned  
264 to an alcohol or controlled substance education, treatment, or  
265 rehabilitation program by a court of the commonwealth or of a like  
266 offense from any other jurisdiction. Such documentation shall be  
267 self-authenticating and admissible, after the commonwealth has  
268 established the defendant's guilt on the primary offense, as evidence  
269 in any court of the commonwealth to prove the defendant's commis-  
270 sion of any prior convictions or assignments to alcohol or controlled  
271 substance education, treatment, or rehabilitation programs described  
272 therein. The commonwealth shall not be required to introduce any  
273 additional corroborative evidence, nor live witness testimony to  
274 establish the validity of such prior offenses.

275 (i) No prosecutions under this section shall be continued without  
276 a finding except for cases disposed of pursuant to the provisions of  
277 subdivision (a) of subsection (3) of this section. No prosecutions  
278 under this section shall be placed on file, or subject to the provisions  
279 of section 87 of chapter 276. At any time before the commencement  
280 of a trial or acceptance of a plea on a complaint alleging a violation  
281 of this section, the prosecutor may apply for the issuance of a new  
282 complaint pursuant to section 35A of chapter 218 alleging a viola-  
283 tion of this section and 1 or more prior operating under the influence  
284 offenses. If such application is made, upon motion of the prosecutor,  
285 the court shall stay further proceedings on the original complaint  
286 pending the determination of the application for the new complaint.  
287 If a new complaint is issued, the court shall dismiss the original  
288 complaint and order that further proceedings on the new complaint

289 be postponed until the defendant has had sufficient time to prepare a  
290 defense. Upon any conviction or continuation without a finding  
291 under this section, the court shall order that any license issued by the  
292 commonwealth be surrendered to the probation department, and dis-  
293 posed of in a manner prescribed by the registrar. The clerk of courts  
294 shall notify the registrar forthwith of the disposition.

295 (j) Upon a disposition for an operating under the influence  
296 offense as defined in section (1) of this chapter the probation depart-  
297 ment, in the court in which the finding was entered, shall provide the  
298 defendant a copy of the statutory provisions that apply to any further  
299 operating under the influence offense. The statement of statutory  
300 provisions shall be prepared by the secretary of public safety.

301 (k) Upon a disposition for an operating under the influence  
302 offense as defined in section (1) of this chapter the court shall ask  
303 the defendant whether he was served alcohol prior to his violation at  
304 an establishment licensed to serve alcohol. If the defendant answers  
305 in the affirmative, the defendant shall provide the name and address  
306 of the establishment. The clerk's office shall provide in writing to  
307 the Alcohol Beverage Control Commission the name of the estab-  
308 lishment and date of offense given by the defendant. The Alcohol  
309 Beverage Control Commission shall inform the named establishment  
310 of this incident forthwith. The trial court shall, in conjunction with  
311 the Alcohol Beverage Control Commission, promulgate a standard  
312 form for reporting and collecting said information. The Alcohol  
313 Beverage Control Commission shall provide an annual report  
314 including the collected data to the attorney general, each district  
315 attorney, and the local liquor licensing authorities.

316 (l) The provisions of section 6A of chapter 279 shall not apply  
317 to a person with a prior operating under the influence offense as  
318 defined in section 1 of chapter 90.

319 (25) Alternative Dispositions

320 (a) First Offense: If there is no evidence of a prior operating  
321 under the influence offense, a person may consent to being placed on  
322 probation for not more than 2 years instead of the disposition speci-  
323 fied in subdivision (a) of subsection (2) of this section. Offenders  
324 with a single prior operating under the influence offense more than  
325 10 years preceding the date of the most recent offense may also be  
326 eligible for a disposition under this subdivision. As a condition of  
327 this probation, the person shall be ordered to complete an out patient

328 alcohol, drug, or substance abuse program as specified by the court.  
329 Offenders who reside out of state, or are a full time student out of  
330 state, may at the court's discretion complete a licensed first offend-  
331 er's program in that other state, as approved by the Department of  
332 Public Health.

333 If a person is sentenced to an alternative disposition, notwith-  
334 standing the provisions of subsection (5) of this section, the court  
335 shall impose a revocation of the defendant's license or right to  
336 operate for not less than 45 days nor more than 90 days if said  
337 person was over the age of 21 at the time of the offense, or 210 days  
338 if said person was under the age of 21 at the time of offense. A  
339 person may immediately apply for a hardship license following dis-  
340 position and enrollment into the treatment program required by this  
341 subsection. In all cases where a hardship license is sought, the pro-  
342 bation office where the offender is or was on probation will, upon  
343 request, furnish the registrar with documentation verifying the per-  
344 son's status with probation. Hardship licenses under this subsection  
345 shall be issued under such terms and conditions as the registrar may  
346 prescribe, after the registry is convinced that the issues that this  
347 offense(s) arose from have been dealt with by the operator and  
348 brought under control. Said hardship license shall be issued, subject  
349 to the agency's discretion, upon a showing of hardship for work,  
350 education, or other purpose the registrar deems valid and significant,  
351 and shall be for an identical 12 hour period, 7 days a week.  
352 Notwithstanding the above, if the records of the registrar contain  
353 additional information regarding operating under the influence  
354 offenses, the registrar shall revoke the license in accordance with  
355 subsection (5) of this section. A person shall be presumed to be a  
356 suitable candidate for this disposition after trial unless otherwise  
357 prohibited by this section. In cases where a eligible person is not  
358 granted such a disposition should he or she seek it, the court shall  
359 make written findings supporting its decision.

360 (b) Second Offense: Notwithstanding the provisions of subsec-  
361 tion (2) of this section, in cases where a defendant has only one prior  
362 operating under the influence offense, the court, in its discretion,  
363 may order the defendant to enter and complete a 14 day in patient  
364 program in lieu of the required 30 day minimum mandatory term.

365 The provisions of this subsection shall not apply to any person  
366 who causes serious bodily injury or death to another person during  
367 the events that gave rise to the complaint or indictment.

368 Each person placed in such a program shall pay a program fee as  
369 determined by the department of public health. The program fee  
370 shall not exceed the cost per client to run the program. The depart-  
371 ment of public health shall compile a schedule of uniform fees for  
372 these programs, which shall be changed only after notice and public  
373 hearing. The department shall promulgate rules and regulations  
374 regarding the process and methodology of setting these fees. No  
375 person shall be denied entry into a program where the court, after  
376 review and investigation by the probation department, determines  
377 that the defendant is indigent, and has filed such an affidavit with the  
378 court. The court may then waive or reduce said fee on a case by  
379 case basis. Subject to appropriation, the department of public health  
380 shall reimburse each program for the costs of services provided to  
381 persons for whom payment of a fee has been waived or reduced on  
382 the grounds of indigency.

383 In addition to the program fee, the court shall assess a \$250 fee to  
384 each person placed in such a program. The court shall transmit the  
385 \$250 to the state treasurer for the support of programs operated by  
386 the commissioner of public health for the investigation, enforcement,  
387 treatment and rehabilitation of persons charged with or convicted of  
388 operating under the influence. The assessment may be reduced or  
389 waived if the court makes written findings that payment would cause  
390 the person severe financial hardship.

391 The alternative disposition programs utilized under this subsec-  
392 tion shall be established, administered or approved by the depart-  
393 ment of public health, who shall have authority to promulgate such  
394 regulations as is necessary to govern the content, conduct, operation  
395 or approval of these programs. The department of public health  
396 shall prepare and publish annually a list of all accepted alcohol treat-  
397 ment and rehabilitation programs, make this list available upon  
398 request to members of the public, and annually furnish the commis-  
399 sioner of probation, the registrar, and the secretary of public safety  
400 with a copy of said list.

401 The commissioner of probation shall annually report to the  
402 department of public health the number of persons who receive an  
403 alternative disposition and the number of persons who have been  
404 required by the court to participate in alcohol or controlled substance  
405 abuse treatment or rehabilitation programs. In addition, the commis-  
406 sioner of probation, and the chief justice of the district courts and the

407 Boston Municipal Court shall annually report to the department of  
408 public health the resources available for alcohol and controlled sub-  
409 stance abuse treatment and rehabilitation of alcohol-impaired or con-  
410 trolled substance abuse-impaired drivers. The report shall evaluate  
411 the existing resources and shall make recommendations as to any  
412 additional resources. The department of public health shall take such  
413 reports into consideration in the development, implementation, and  
414 review of the state's alcoholism or controlled substance abuse plan  
415 and in the preparation of the division's annual budget in a manner  
416 consistent with the Alcoholism Treatment and Rehabilitation Law.

417 (26) The following persons shall complete an alcohol and drug  
418 assessment conducted by the department of public health or other  
419 court approved program as a mandatory condition of any sentence  
420 imposed:

421 (a) A person having a percentage, by weight, of alcohol in his  
422 blood of .20% or above during an operating under the influence  
423 offense; or

424 (b) A person with a second or subsequent operating under the  
425 influence offense.

426 The assessment shall include at a minimum an evaluation of the  
427 level of the offender's addiction to alcohol and/or drugs and the  
428 department's recommended course of treatment. Such assessment  
429 and recommendation shall be reported to the offender's probation or  
430 parole officer. The commissioner of public health may make such  
431 rules and regulations as are necessary to carry out this section.

432 (27) Upon conviction the registrar shall revoke the license or right  
433 to operate, based on the number of offenses on the agency's records,  
434 as follows:

435 (a) First offense: 1 year except for persons that have properly  
436 received dispositions pursuant to subsection 3 of section 24D of this  
437 chapter. The operator may apply for a hardship license 90 days from  
438 the date of conviction, absent any other revocations.

439 (b) Second offense: 2 years except for persons that have prop-  
440 erly received dispositions pursuant to subsection 3 of section 24D of  
441 this chapter. The operator may apply for a hardship license 1 year  
442 from the date of conviction, absent any other revocations.

443 (c) Third offense: 8 years. The operator may apply for a hard-  
444 ship license 2 years from the date of conviction, absent any other  
445 revocations.



446 (d) Fourth offense: 10 years. The operator may apply for a  
447 hardship license 5 years from the date of conviction, absent any  
448 other revocations.

449 (e) Fifth or subsequent offense: Lifetime.

450 (f) Notwithstanding subdivisions (a) through (e) of this subsec-  
451 tion, the registrar shall revoke for life a person's license or right to  
452 operate upon an operating under the influence offense if the person  
453 has been previously convicted of motor vehicle homicide while  
454 under the influence or manslaughter by motor vehicle.

455 (g) Hardship licenses under this subsection shall be issued under  
456 such terms and conditions as the registrar may prescribe, after the  
457 registry is convinced that the issues that this offense(s) arose from  
458 have been dealt with by the operator and brought under control.  
459 Said hardship license shall be issued, subject to the agency's discre-  
460 tion, upon a showing of hardship for work, education, or other  
461 purpose the registrar deems valid and significant, and shall be for an  
462 identical 12 hour period, 7 days a week.

463 (h) If there are 2 prior operating under the influence offenses,  
464 the registrar may revoke the registration of a motor vehicle owned  
465 by a person for the duration of the revocation of the license or right  
466 to operate. No new registration shall be issued to said person during  
467 the revocation period.

468 **Chapter 90, § 24E — Implied Consent.**

469 (28) Whoever operates a motor vehicle on a public way shall be  
470 deemed to have consented to a test of his breath or blood in the event  
471 he is arrested or charged with operating a motor vehicle while under  
472 the influence of intoxicating liquor. A person brought to a police sta-  
473 tion or place of detention is deemed to have consented to a test of his  
474 breath. A valid breath test under this section shall be one adequate  
475 breath sample analysis, followed by one calibration standard  
476 analysis, and then by a second adequate breath sample analysis. A  
477 person is deemed to have consented to a test of his blood only if he  
478 has been brought to a medical facility licensed pursuant to the provi-  
479 sions of section 51 of chapter 111; provided further that no person  
480 inflicted with hemophilia or any other condition requiring the use of  
481 anticoagulants shall be deemed to have consented to the withdrawal  
482 of blood. Such test shall be administered by or at the direction of a  
483 police officer as defined in section 1 of chapter 90C, having reason-

484 able grounds to believe that the defendant was operating under the  
485 influence.

486 In any prosecution for an operating under the influence offense,  
487 evidence of a defendant's blood alcohol content at the time of  
488 offense, shown by breath or blood, is relevant and admissible to  
489 determine whether the defendant was under the influence of intoxicating liquor as defined in section 1 of this chapter, if test was conducted by or at the direction of a police officer, with the consent of the defendant. Upon the defendant's request the results of said test shall be made available to him. In any case where a test is given, the defendant shall have the right to have another test done at his own expense, by a physician of his choosing.

496 Evidence that the defendant refused such test shall not be admissible in a criminal or civil proceeding, but shall be admissible in any administrative action before the registrar. For purposes of this section, a refusal is either a verbal or written refusal to take a test, or a failure to consent to a test required by this section.

501 If such evidence is that the blood alcohol content was .05% or less, there shall be a permissible inference that the defendant was not under the influence of intoxicating liquor, and he shall be released from custody forthwith, absent any other charges. The officer(s) who placed the defendant in custody shall not be liable for false arrest if there were reasonable grounds to believe that he was operating under the influence.

508 If the evidence is that such blood alcohol content was more than .05% but less than .08%, there shall be no permissible inference.

510 If the evidence is that such blood alcohol content was .08% or more, the defendant is deemed to be under the influence as defined in section 1 of this chapter.

513 A certificate, signed and sworn to, by a chemist of the department of the state police or a laboratory certified by the department of public health, which contains the results of an analysis made by such chemist of the blood alcohol content shall be prima facie evidence.

517 (29) Upon any refusal of a test required by this section, the registrar shall immediately revoke the person's license or right to operate as follows:

520 (a) If the person was age 21 or over at the time of offense, and  
521 has no prior operating under the influence offenses, the revocation  
522 shall be for 180 days.

523 (b) If the person has one prior operating under the influence  
524 offense, or was under age 21 at the time of offense and has no more  
525 than 1 prior operating under the influence offenses, the revocation  
526 shall be for 3 years.

527 (c) If the person has 2 prior operating under the influence  
528 offenses, the revocation shall be for 5 years.

529 (d) If the person has 3 or more prior operating under the influ-  
530 ence offenses, the revocation shall be for life.

531 (e) If the person has a prior conviction under sections 24L or  
532 24J of this chapter, the revocation shall be for 10 years.

533 (f) If the person has a prior operating under the influence  
534 offense pursuant to section 24G or 24K of this chapter or a convic-  
535 tion under section 24L of this chapter or section 13 ½ of  
536 chapter 265, the revocation shall be for life.

537 (g) No hardship licenses on revocations for test refusals shall be  
538 granted, except for candidates that have properly received disposi-  
539 tions pursuant to subsection 3 of section 24D of this chapter. Any  
540 revocations under this section shall be consecutive with any revoca-  
541 tion or revocation for the underlying operation under the influence  
542 offense. Notwithstanding that, if the charges against the person are  
543 dismissed, or the person is found not guilty, the person may immedi-  
544 ately file a motion before the judge that heard the case, for the pur-  
545 pose of seeking restoration of the license or right to operate. At said  
546 hearing, if the court finds that the charges were resolved in favor of  
547 the defendant, that there are no alcohol related charges pending in  
548 this or any other court, and that there is no evidence before the court  
549 based on a preponderance of the evidence that reinstatement of the  
550 license or right to operate would endanger the public, there shall be a  
551 presumption that the court shall order that this particular revocation  
552 be terminated.

553 (h) Any person refusing a test under this section shall have a  
554 right, at his request, to a hearing before the registrar to determine if  
555 grounds exist for the revocation. Any hearing request shall be made  
556 within 15 days of the incident giving rise to this revocation. The  
557 hearing shall be limited to the issues of whether reasonable grounds  
558 exist for the officer's belief that the person was operating under the  
559 influence at the time of the incident, whether the person was advised  
560 of the consequences of the refusal, and did the person refuse or fail  
561 to consent to such test. The registrar, upon accepting an appeal,

562 shall have a reasonable period of time to request and gather such evi-  
563 dence as the hearings officer needs in order to rule on the issues  
564 raised by the appellant. The registrar shall compile a record of the  
565 hearing. If the ruling is in the person's favor, absent any other  
566 reason for revocation, the registrar shall restore the person's license  
567 or right to operate. The registrar may promulgate such rules and  
568 regulations as is necessary regarding the conduct of these hearings.

569 (i) If the registrar rules that the revocation for refusal was  
570 proper, the appellant may file a petition for judicial review in the dis-  
571 trict court having jurisdiction over the underlying operation under  
572 the influence charge within 30 days of the registrar's decision. The  
573 court must then schedule a hearing within 30 days of the appellant's  
574 application, unless the appellant has waived this time requirement.  
575 The petition shall be filed in the nature of a civil action challenging  
576 the action of an administrative agency, and shall be an administrative  
577 review limited to the record, including the evidence and arguments,  
578 compiled at the hearing. Along with the submission of the record,  
579 the registrar shall prepare written findings supporting the reasons for  
580 denying the petition for the court to review. If the court rules in the  
581 appellant's favor, the court shall prepare specific findings indicating  
582 the reasons for reversing the registrar's determination, and send the  
583 findings to the registrar forthwith. The registrar shall restore the  
584 license, absent any other reasons for revocation. In cases where  
585 other revocations exist, the registrar shall then terminate this revoca-  
586 tion for refusal, but maintain any other valid revocations.

587 If a test indicates that a person was operating with a blood alcohol  
588 content of .08% or above, the registrar shall immediately revoke the  
589 person's license or right to operate for 30 days, or until the conclu-  
590 sion of the court case, whichever is shorter.

591 (j) A person whose license or right to operate is revoked under  
592 this subsection may appeal the revocation within 10 days of the  
593 arraignment to the court where the charges are pending. The appeal  
594 shall be limited to the issues of whether a blood test, taken within a  
595 reasonable period of time after the arrest, shows a result of less than  
596 .08%, or that the test results were not consistent with the require-  
597 ments of subsection (1) of this section.

598 (30) Chemical analysis of the breath of a person charged with a  
599 violation of this chapter shall not be considered valid under the pro-  
600 visions of this chapter, unless such analysis has been performed by a

601 certified operator, using infrared breath-testing devices according to  
602 methods approved by the secretary of public safety. The secretary of  
603 public safety shall promulgate rules and regulations regarding satis-  
604 factory methods, techniques and criteria for the conduct of such  
605 tests, and shall establish a statewide training and certification pro-  
606 gram for all operators of such devices and a periodic certification  
607 program for such breath testing devices; provided, however, that the  
608 secretary may terminate or revoke such certification at his discretion.  
609 Said regulations shall include, but shall not be limited to the  
610 following:

611 (a) The chemical analysis of the breath of a person charged be  
612 performed by a certified operator using a certified infrared breath-  
613 testing device in the following sequence:

614 (1) one adequate breath sample analysis

615 (2) one calibration standard analysis

616 (3) a second adequate breath sample analysis

617 (b) No person shall perform such a test unless certified by the  
618 secretary of public safety

619 (c) No breath testing device, mouthpiece or tube shall be  
620 cleaned with any substance containing alcohol.

621 The secretary of public safety shall prescribe uniform formats,  
622 electronic or otherwise, for reports of such chemical analysis to be  
623 used by law enforcement officers and others acting in accordance  
624 with the provisions of this chapter. The reports generated in these  
625 formats shall be sequentially numbered. Each chief of police or  
626 other officer or official having charge or control of a law enforce-  
627 ment agency shall be responsible for the proper availability of these  
628 formats. Each party so responsible shall prepare or cause to be pre-  
629 pared such records and reports relating to such uniform formats and  
630 their disposition in such manner and at such times as the secretary of  
631 public safety shall prescribe.

632 Upon any failed or refused test under this section the police shall  
633 confiscate any license or permit issued by the commonwealth in the  
634 possession of the defendant, serve the defendant with a notice of  
635 revocation on behalf of the registrar, and impound the operator's  
636 vehicle for a 12 hour period following the incident. The operator  
637 shall be responsible for all costs associated with towing, storage and  
638 maintenance of the vehicle. In addition, in each case, the police  
639 shall prepare a report to the registrar, indicating the following:

640 (d) the grounds the arresting officer had to believe that the  
641 defendant was operating under the influence;

642 (e) the defendant was advised of the consequences of refusing  
643 the test;

644 (f) the results of any failed test;

645 (g) whether or not the operator refused or failed to consent to  
646 the test;

647 (h) the identity of the officer who advised the defendant of his  
648 rights;

649 (i) the identity and certification of the officer who conducted the  
650 breath test;

651 (j) the identity of any witness to the test or refusal;

652 (k) that the test was administered in accordance with the regula-  
653 tions and standards promulgated by the secretary of safety; and

654 (l) the equipment used was regularly serviced and maintained  
655 and believed to be in proper working order.

656 The reports specified in this subsection shall be reported to the  
657 registrar forthwith in order to expedite the revocation of the license  
658 or right to operate, and shall be admissible as prima facie evidence  
659 in any administrative action before the registrar.

660 If a test is an analysis of blood rather than breath, in cases where a  
661 test indicates a blood alcohol content of .08% or above, or .04% or  
662 above if the operator holds a commercial license and was operating a  
663 commercial vehicle, or .02% or above if the operator is under age 21  
664 at the time of offense, the police shall report said result to the regis-  
665 trar, who shall revoke the license consistent with the provisions of  
666 this section.

667 (31) Notwithstanding the findings of any charge, the following  
668 additional provisions shall apply to persons under age 21 after  
669 having been arrested for or charged with an operating under the  
670 influence offense:

671 (a) Upon evidence that a person under the age of 21 had a blood  
672 alcohol content of .02% or above or refused to submit to a chemical  
673 test or analysis of his breath or blood under this section, shall have  
674 his license or right to operate a motor vehicle revoked by the regis-  
675 trar for a period of an additional 180 days. Any person who is less  
676 than 18 years of age at the time of such offense shall have his license  
677 revoked by the registrar for an additional 1 year.

678 If a person has not been previously arrested for or charged with  
679 operating under the influence, such person shall, if he consents, be  
680 assigned to a program specifically designed by the department of  
681 public health for the treatment of underage drinking drivers. Upon  
682 entry into a program, authorized by this subsection, or a program  
683 required by section 24D of this chapter, the revocation of a license or  
684 right to operate as required by this subsection shall be waived by the  
685 registrar for a person under 21 years of age and over 18 years of age.  
686 The revocation shall be reduced to 180 days for a person who was  
687 under the age of 18 at the time of such offense. Upon the failure of a  
688 person who, at the time of offense was under the age of 21, to suc-  
689 cessfully complete such program, the registrar shall forthwith revoke  
690 such license or permit to operate for 180 days, or for 1 year if the  
691 person was under age 18 at the time of offense.

692 (b) The license, permit, or right to operate of a person convicted  
693 of any violation under section 24, 24A, 24B, 24C, 24I or 24J of this  
694 chapter, who was under the age of 18 at the time of such violation  
695 and whose license or permit to operate was not already revoked  
696 under this section for failing or refusing a test, shall have such  
697 license or right to operate revoked for an additional period of 180  
698 days for a first offense and for a period of 1 year for a second or sub-  
699 sequent offense.

700 **Chapter 90, § 24F — Ignition Interlock Devices.**

701 (32) Any person whose license or right to operate is revoked for 2  
702 or more operating under the influence offenses, or who is operating  
703 on a restricted license for such offenses, shall be required to have an  
704 ignition interlock device installed on each vehicle that he may own,  
705 lease, or operate as a mandatory condition of issuance of a new  
706 license or right to operate. The registrar shall mark the operator's  
707 license with a restriction code identifying the requirement of an igni-  
708 tion interlock device. The restriction shall remain on the license  
709 during the hardship license period and an additional 2 years upon the  
710 full restoration of the license. In cases where the person has not been  
711 granted a hardship license, the ignition interlock requirement shall  
712 be for a 2 year period following the reinstatement of the license or  
713 right to operate.

714 Each device shall be subject to inspection, maintenance, and mon-  
715 itoring as the registrar may prescribe. No ignition interlock device

716 utilized under this section shall allow a vehicle to start if a person's  
717 blood alcohol content exceeds .02%. The registrar shall promulgate  
718 such rules and regulations as deemed necessary regarding this  
719 section.

720 The registrar may, after hearing, revoke the license or right to  
721 operate of any person who removes an ignition interlock device  
722 without the written consent of the registrar, or who fails to have it  
723 inspected, maintained or monitored on at least 2 separate occasions  
724 during the requirement period, or who makes 2 failed attempts on  
725 separate occasions to operate a vehicle with a blood alcohol content  
726 that prohibited the vehicle from starting on at least 2 separate occa-  
727 sions. The revocation shall be 10 years for a first violation, and life-  
728 time for any subsequent violation of this subsection.

729 (33) No person required to have an ignition interlock device shall  
730 operate a motor vehicle without such a device on a public way.

731 (a) A person convicted under this subsection shall be impris-  
732 oned in a jail or house of correction for not less than 6 months but  
733 not more than 2½ years, or the state prison for not less than 2½ years  
734 but not more than 5 years with a minimum mandatory term of 6  
735 months and fined not less than \$1,000 but not more than \$15,000.  
736 No case commenced under this subsection shall be continued  
737 without a finding or placed on file or subject to the provisions of  
738 section 87 of chapter 276.

739 (b) Upon a conviction of this subsection, the registrar shall  
740 revoke the license or right to operate as follows:

741 (1) First offense: 10 years

742 (2) Subsequent offense: Lifetime

743 The provisions of this subsection shall not apply when the person  
744 is operating a vehicle with a police officer or employee or agent of  
745 the registrar present for the sole purpose of conducting a road test as  
746 a condition of license reinstatement.

747 (34) No person shall interfere with or tamper with an ignition  
748 interlock device with the intent to disable or bypass such device.

749 (a) A person convicted under this subsection shall be punished  
750 by imprisonment in a jail or house of correction for not less than 6  
751 months but not more than 2½ years, or state prison for not less than  
752 2½ years but not more than 5 years. No case commenced under this  
753 subsection shall be continued without a finding or placed on file or  
754 subject to the provisions of chapter 276 section 87.



755 (b) Upon a conviction under this subsection, if the person con-  
756 victed was under a license restriction requiring an ignition interlock,  
757 the registrar shall revoke the license or right to operate as follows:

758 (1) First offense: 10 years

759 (2) Subsequent offense: Lifetime

760 (35) No person shall solicit another to interfere with or tamper  
761 with an ignition interlock device with the intent to disable or bypass  
762 such device.

763 (a) A person convicted under this subsection shall be punished by  
764 imprisonment in a jail or house of correction for not less than 6  
765 months nor more than 2 ½ years or state prison for not less than 2½  
766 years nor more than 5 years. No case commenced under this subsec-  
767 tion shall be continued without a finding or placed on file or subject  
768 to the provisions of section 87 of chapter 276.

769 (b) Upon a conviction under this subsection, if the person con-  
770 victed was under a license restriction requiring an ignition interlock,  
771 the registrar shall revoke the license or right to operate as follows:

772 (1) First offense: 10 years

773 (2) Subsequent offense: Lifetime

774 (36) No person shall knowingly breathe into an ignition interlock  
775 device as defined in section 1 of chapter 90, or start a motor vehicle  
776 equipped with an ignition interlock device, for the purpose of pro-  
777 viding an operable motor vehicle to a person whose license or right  
778 to operate a vehicle is restricted.

779 (a) A person convicted under this subsection shall be punished as  
780 follows:

781 (1) First offense: The defendant shall be imprisoned in a jail or  
782 house of correction for not less than 6 months but not more than 2½  
783 years.

784 (2) Second or subsequent offense: The defendant shall be impris-  
785 oned in state prison for not less than 3 years but not more than 5  
786 years.

787 A person convicted under this subsection shall be punished by a  
788 fine of not less than \$1,000 but no more than \$5,000. No case com-  
789 menced under this subsection shall be continued without a finding or  
790 placed on file or subject to the provisions of section 87 of  
791 chapter 276.

792 (b) Upon a conviction under this subsection, if the person  
793 convicted was under a license restriction requiring an ignition inter-

794 lock device, the registrar shall revoke the license or right to operate  
795 as follows:

796 (1) First offense: 10 years

797 (2) Subsequent offense: Lifetime

798 (37) No person shall solicit another to breathe into an ignition  
799 interlock device as defined in section 1 of chapter 90, or start a  
800 motor vehicle equipped with an ignition interlock device, for the  
801 purpose of providing an operable motor vehicle to a person whose  
802 license or right to operate a vehicle is restricted.

803 (a) A person convicted under this subsection shall be punished  
804 as follows:

805 (1) First offense: The defendant shall be imprisoned in the  
806 jail or house of correction for not less than 6 months but not more  
807 than 2½ years.

808 (2) Second or subsequent offense: The defendant shall be  
809 imprisoned in state prison for not less than 3 years but not more than  
810 5 years.

811 A person convicted under this subsection shall be punished by a  
812 fine of not less than \$1,000 but no more than \$5,000. No case com-  
813 menced under this subsection shall be continued without a finding or  
814 placed on file or subject to the provisions of section 87 of  
815 chapter 276.

816 (b) Upon a conviction under this subsection, if the person con-  
817 victed was under a license restriction requiring an ignition interlock  
818 device, the registrar shall revoke the license or right to operate as  
819 follows:

820 (1) First offense: 10 years

821 (2) Subsequent offense: Lifetime

822 (38) A copy of a signed acknowledgement of the terms and exis-  
823 tence of an ignition interlock device restriction shall be admissible as  
824 prima facie evidence to prove the knowledge of the person who exe-  
825 cuted the document.

826 **Chapter 90, § 24G — Motor Vehicle Forfeitures.**

827 (39) A motor vehicle or vessel owned by a person who has at  
828 least 3 prior operating under the influence offenses, as defined in  
829 section 1 of chapter 90, may be forfeited to the commonwealth.

830 (40) A district attorney or the attorney general may petition the  
831 superior or district court, in the name of the commonwealth in the

832 nature of a proceeding in rem to order forfeiture of such motor  
833 vehicle or vessel. The petition shall be filed in the court having  
834 jurisdiction over the criminal proceeding brought under this chapter  
835 or chapter 90B. The proceeding shall be deemed a civil suit in  
836 equity. In all such actions where the motor vehicle or vessel is  
837 jointly owned by either a parent, spouse, child, grandparent, brother,  
838 sister, or parent of the spouse living in the defendant's household,  
839 before the date of the second or subsequent operating under the  
840 influence offense committed by the defendant, the commonwealth  
841 shall have the burden of proving the existence of probable cause to  
842 institute the action. The claimant shall have the burden of proving  
843 that the property is not forfeitable because the claimant is dependent  
844 on the motor vehicle or vessel for his livelihood or the maintenance  
845 of his family.

846 The court shall order the commonwealth to give notice, by certi-  
847 fied or registered mail, to the owners of the motor vehicle or vessel  
848 and, to such other persons or entities who appear to have an interest  
849 therein. The court shall promptly, but not less than 2 weeks after  
850 notice, hold a hearing on the petition. Upon the motion of an owner  
851 of the motor vehicle or vessel, the court may continue the hearing on  
852 the petition pending the outcome of a criminal trial related to a  
853 charge of operating under the influence in violation of this chapter or  
854 chapter 90B. During the pendency of the proceedings, the court may  
855 issue, at the request of the commonwealth, ex parte, any preliminary  
856 order or process necessary to seize and secure the property for which  
857 forfeiture is sought. Process for seizure of the property shall issue  
858 only upon a showing of probable cause. The application, issuance,  
859 execution, and return thereof shall be subject to the provisions of  
860 chapter 276.

861 (41) At a hearing under this section, the court shall hear evidence  
862 and make findings of fact and conclusions of law, and shall issue a  
863 final order. The parties shall have a right of appeal as from a decree  
864 in equity. No forfeiture under this section shall extinguish a per-  
865 fected security interest held by a creditor in the property at the time  
866 of the filing of the forfeiture action. In all actions where a pro-  
867 ceeding results in forfeiture, the final order shall provide for disposi-  
868 tion of the property by the commonwealth in any manner not  
869 prohibited by law, including official use by an authorized law  
870 enforcement or other agency, or at sale at public auction or by com-

871 petitive bidding, with such sale being conducted by the office of the  
872 district attorney or the attorney general that obtained the final order  
873 of forfeiture.

874 (42) The final order of the court shall provide that the proceeds of  
875 any such sale shall be used to pay the reasonable expenses of the for-  
876 feiture proceedings, seizure, storage, maintenance of custody, adver-  
877 tising and notice, and the balance of any such sale shall be  
878 distributed equally among the prosecuting district attorney or  
879 attorney general, the city, town or state police department involved  
880 in the forfeiture and the Victims of Drunk Driving Trust Fund estab-  
881 lished in section 66 of chapter 10. If more than 1 department was  
882 substantially involved in the seizure, the court having jurisdiction  
883 over the forfeiture proceeding shall distribute the portion for law  
884 enforcement equitably among the departments.

885 (43) There shall be established within the office of the state trea-  
886 surer a separate Operating Under the Influence Deterrent Trust Fund  
887 for each district attorney and for the attorney general. All monies  
888 and proceeds received by a prosecuting district attorney or attorney  
889 general pursuant to this section shall be deposited in the fund and  
890 shall be expended without further appropriation to defray the costs  
891 of investigations, to provide additional technical equipment or  
892 expertise, to provide matching funds to obtain federal grants, or for  
893 such other law enforcement purposes as the district attorney or  
894 attorney general deems appropriate. Any program seeking to be an  
895 eligible recipient of the funds shall file an annual audit report with  
896 the local district attorney and attorney general. Such report shall  
897 include, but not be limited to, a listing of the assets, liabilities, item-  
898 ized expenditures and board of directors of the program. Within 90  
899 days of the close of the fiscal year, each district attorney and the  
900 attorney general shall file an annual report with the house and senate  
901 committees on ways and means on the use of the monies in the trust  
902 fund for the purposes of deterring operating under the influence pro-  
903 grams.

904 (44) All moneys and proceeds received by a police department  
905 shall be deposited into the fund and shall be expended without fur-  
906 ther appropriation to defray the costs of investigations, to provide  
907 additional technical equipment or expertise, to provide matching  
908 funds to obtain federal grants, or to accomplish such other law  
909 enforcement purposes as the chief of police of such city or town, or

910 the colonel of state police deem appropriate, but such funds shall not  
911 be considered a source of revenue to meet the operating needs of  
912 such department.

913 **Chapter 90, § 24H — Aggravated OUI.**

914 (45) Any person aged 17 to 21 years who commits an operating  
915 under the influence offense, and who has a blood alcohol content of  
916 .20% or above, shall also be guilty of aggravated operating under the  
917 influence, and in addition to the penalties mandated in section 24D  
918 of this chapter, shall also be required to enter and complete a 14 day  
919 residential treatment program as described in subdivision (b) of sub-  
920 section (3) of that section. In cases where the person is otherwise  
921 qualified for a disposition under subdivision (a) of subsection (3),  
922 the person shall be required to complete the 14 day residential pro-  
923 gram in lieu of the outpatient program specified therein.

924 **Chapter 90, § 24I — Child Endangerment.**

925 (46) No person shall operate a motor vehicle upon any public way  
926 while under the influence of intoxicating liquor, drugs, or other sub-  
927 stance with a child under the age of 15 in the vehicle.

928 (a) A person convicted under this section shall be punished as  
929 follows:

930 (1) First offense: The defendant shall be imprisoned in a jail  
931 or house of correction for not less than 90 days but not more than 2½  
932 years and fined not less than \$1,000 but not more than \$5,000.

933 (2) Subsequent offense: If there is a prior conviction for a  
934 violation of this subsection or a like offense in another jurisdiction  
935 the defendant shall be imprisoned in a jail or house of correction for  
936 a minimum mandatory term of 6 months but not more than 2½  
937 years, or state prison for not less than 3 years but not more than 5  
938 years with a minimum mandatory term of 6 months and fined not  
939 less than \$5,000 but not more than \$10,000.

940 (b) Upon a conviction under this section the registrar shall  
941 revoke the license or right to operate for an additional period as  
942 follows:

943 (1) First offense: 1 year

944 (2) Subsequent offense: 3 years

945 No appeal or motion for a new trial shall stay the revocation of  
946 the license or right to operate.

947 (c) A sentence imposed under this subsection shall be served  
948 consecutively to and not concurrently with the underlying operating  
949 under the influence offense.

950 **Chapter 90, § 24J — Operating under the influence causing**  
951 **serious bodily injury.**

952 (47) No person shall operate a motor vehicle on a public way  
953 while under the influence of intoxicating liquor, drugs, or other sub-  
954 stances and by such operation cause serious bodily injury to another.

955 (a) A person convicted under this subsection shall be impris-  
956 oned in a jail or house of correction for not more than 2½ years and  
957 fined not more than \$5,000. No case commenced under this section  
958 shall be continued without a finding, or placed on file, or subject to  
959 the provisions of section 87 of chapter 276.

960 (48) No person shall operate a motor vehicle on a public way neg-  
961 ligently or recklessly so that the lives or safety of the public might  
962 be endangered while under the influence of intoxicating liquor,  
963 drugs, or other substances and by such operation cause serious  
964 bodily injury to another.

965 (a) A person convicted under this subsection shall be impris-  
966 oned in a jail or house of correction for a minimum mandatory term  
967 of 6 months but not more than 2½ years, or state prison for not less  
968 than 2½ years but not more than 10 years with a minimum manda-  
969 tory term of 6 months and fined not more than \$5,000. No case  
970 commenced under this section shall be continued without a finding,  
971 or placed on file, or subject to the provisions of section 87 of  
972 chapter 276.

973 (49) Upon a conviction under this section the registrar shall  
974 revoke the license or right to operate for 2 years unless a longer  
975 period of revocation is required by section 24D of this chapter. No  
976 appeal or motion for a new trial shall stay the revocation of the  
977 license or right to operate.

978 (50) Upon a disposition under this section the court shall assess a  
979 \$50 fee to the person. The court shall transmit the \$50 to the state  
980 treasurer to be deposited into the Victims of Drunk Driving Trust  
981 Fund. The assessment shall not be subject to waiver by the court for  
982 any reason. If the court sentences the person to a correctional  
983 facility the outstanding assessment shall be noted on the mittimus.

984 (51) For purposes of this section “serious bodily injury” shall  
985 mean bodily injury which creates a substantial risk of death or  
986 involves either total disability or the loss or substantial impairment  
987 of some bodily function for a substantial period of time.

988 **Chapter 90, § 24K (1) — Misdemeanor motor vehicle homi-**  
989 **cide — negligently or recklessly.**

990 (52) No person shall operate a motor vehicle on a public way neg-  
991 ligently or recklessly so that the lives or safety of the public might  
992 be endangered and by such operation cause the death of another.

993 (a) A person convicted under this subsection shall be impris-  
994 oned in a jail or house of correction for not less than 30 days but not  
995 more than 2½ years or fined not less than \$300 but not more than  
996 \$3,000, or both. No case commenced under this subsection shall be  
997 continued without a finding, or placed on file, or subject to the pro-  
998 visions of section 87 of chapter 276.

999 (b) Upon a conviction under this subsection the registrar shall  
1000 revoke the license or right to operate as follows:

1001 (1) First offense: 15 years

1002 (2) Subsequent offense: Lifetime

1003 No appeal or motion for a new trial shall stay the revocation of  
1004 the license or right to operate.

1005 **Chapter 90, § 24K (2) — Misdemeanor motor vehicle homi-**  
1006 **cide — under the influence.**

1007 (53) No person shall operate a motor vehicle on a public way  
1008 under the influence of intoxicating liquor, drugs, or other substances  
1009 and by such operation cause the death of another.

1010 (a) A person convicted under this subsection shall be impris-  
1011 oned in the jail or house of correction for not less than 30 days but  
1012 not more than 2½ years and fined not less than \$300 but not more  
1013 than \$3,000. No case commenced under this subsection shall be  
1014 continued without a finding, or placed on file, or subject to the pro-  
1015 visions of section 87 of chapter 276.

1016 (b) Upon a conviction under this subsection the registrar shall  
1017 revoke the license or right to operate as follows:

1018 (1) First offense: 15 years

1019 (2) Subsequent offense: Lifetime

1020 (c) Notwithstanding the provisions of subdivision (b) above, if a  
1021 person is convicted under this subsection and has a prior operating  
1022 under the influence offense, the registrar shall revoke his license or  
1023 right to operate for life.

1024 No appeal or motion for a new trial shall stay the revocation of  
1025 the license or right to operate.

1026 (d) Upon a disposition under this subsection the court shall  
1027 assess a \$50 fee to the person. The court shall transmit the \$50 to  
1028 the state treasurer to be deposited into the Victims of Drunk Driving  
1029 Trust Fund. The assessment shall not be subject to waiver by the  
1030 court for any reason. If the court sentences the person to a correc-  
1031 tional facility the outstanding assessment shall be noted on the mit-  
1032 timus.

1033 **Chapter 90, § 24K (3) — Felony motor vehicle homicide.**

1034 (54) No person shall operate a motor vehicle negligently or reck-  
1035 lessly on a public way so that the lives or safety of the public might  
1036 be endangered while under the influence of intoxicating liquor,  
1037 drugs, or other substances and by such operation cause the death of  
1038 another.

1039 (a) A person convicted under this subsection shall be imprisoned  
1040 in a jail or house of correction for a minimum mandatory term of 1  
1041 year but not more than 2½ years, or state prison for not less than 2½  
1042 years but not more than 15 years with a minimum mandatory term of  
1043 1 year and fined not more than \$5,000. No case commenced under  
1044 this subsection shall be continued without a finding, or placed on  
1045 file, or subject to the provisions of section 87 of chapter 276.

1046 (b) Upon a conviction under this subsection the registrar shall  
1047 revoke the license or right to operate as follows:

1048 (1) First offense: 15 years

1049 (2) Subsequent offense: Lifetime

1050 (c) Notwithstanding the provisions of subdivision (b) above, if a  
1051 person is convicted under this subsection and has a prior operating  
1052 under the influence offense, the registrar shall revoke his license or  
1053 right to operate for life.

1054 No appeal or motion for a new trial shall stay the revocation of  
1055 the license or right to operate.

1056 (d) Upon a disposition under this subsection the court shall  
1057 assess a \$50 fee to the person. The court shall transmit the \$50 to



1058 the state treasurer to be deposited into the Victims of Drunk Driving  
1059 Trust Fund. The assessment shall not be subject to waiver by the  
1060 court for any reason. If the court sentences the person to a correc-  
1061 tional facility the outstanding assessment shall be noted on the mit-  
1062 timus.

1063 **Chapter 90, § 24L — Manslaughter by motor vehicle.**

1064 (55) No person shall operate a motor vehicle wantonly and reck-  
1065 lessly while under the influence of intoxicating liquor, drugs, or  
1066 other substances and by such operation cause the death of another.

1067 (a) A person convicted under this section shall be imprisoned in  
1068 state prison for a minimum mandatory term of 5 years but not more  
1069 than 20 years and fined not more than \$25,000. No case commenced  
1070 under this section shall be continued without a finding, or placed on  
1071 file, or subject to the provisions of section 87 of chapter 276.

1072 (b) Upon a conviction of this section the registrar shall revoke  
1073 the license or right to operate for 15 years to life. No appeal or  
1074 motion for a new trial shall stay the revocation of the license or right  
1075 to operate.

1076 Any person aggrieved by the registrar's decision may file an  
1077 appeal in the superior court. If the court determines that the registrar  
1078 abused his discretion, the court may vacate and reduce the revoca-  
1079 tion of the license or the right to operate as ordered by the registrar.  
1080 In no case shall the revocation period be less than 15 years.

1081 (c) Notwithstanding the provisions of paragraph (b) above, if a  
1082 person convicted under this section has a prior operating under the  
1083 influence offense, the registrar shall revoke his license or right to  
1084 operate for life.

1085 (d) Upon a disposition under this section the court shall assess a  
1086 \$50 fee to the person. The court shall transmit the \$50 to the state  
1087 treasurer to be deposited into the Victims of Drunk Driving Trust  
1088 Fund. The assessment shall not be subject to waiver by the court for  
1089 any reason. If the court sentences the person to a correctional  
1090 facility the outstanding assessment shall be noted on the mittimus.

1091 **Chapter 90, § 24M — Alcohol education for law enforcement**  
1092 **personnel; duties of officials and agencies.**

1093 The officials and agencies designated in this section are hereby  
1094 directed to perform the duties in this section and any other action

1095 within their authority in order to ensure effective enforcement of  
1096 chapter 90 section 24 to 24M, inclusive.

1097 (56) The municipal police training committee established in  
1098 section 116 of chapter 6 shall provide training, including but not lim-  
1099 ited to, education concerning the aforesaid sections to all law  
1100 enforcement personnel throughout the commonwealth.

1101 (57) The chief administrative justice of the trial court department  
1102 shall provide training, including but not limited to education con-  
1103 cerning the aforesaid sections to all appropriate court personnel  
1104 throughout the commonwealth, including but not limited to, judges,  
1105 district attorneys and probation officers.

1106 (58) The executive office of public safety shall establish and  
1107 implement an alcohol sensitive selective traffic enforcement pro-  
1108 gram.

1 SECTION 4.

2 **Chapter 90B of the General Laws is hereby amended by**  
3 **adding the following:**

4 Section 8B ½ —

5 (59) No person shall operate a vessel on the waters of the com-  
6 monwealth wantonly and recklessly while under the influence of  
7 intoxicating liquor, drugs, or other substances and by such operation  
8 cause the death of another.

9 (a) A person convicted under this section shall be imprisoned in  
10 state prison for a minimum mandatory term of 5 years but not more  
11 than 20 years and fined not more than \$25,000. No case commenced  
12 under this subsection shall be continued without a finding, or placed  
13 on file, or subject to the provisions of section 87 of chapter 276.

14 (b) Upon a conviction of this section the registrar shall revoke  
15 the person's license or right to operate for 15 years to life. No  
16 appeal or motion for a new trial shall stay the revocation of the  
17 license or right to operate.

18 Any person aggrieved by the registrar's decision may file an  
19 appeal in the superior court. If the court determines that the registrar  
20 abused his discretion, the court may vacate and reduce the revoca-  
21 tion of the license or revocation of the right to operate as ordered by

22 the registrar. In no case shall the revocation or revocation period be  
23 less than 15 years.

24 (c) Notwithstanding the provisions of paragraph (b) above, if a  
25 person convicted under this section has a prior operating under the  
26 influence offense, the registrar shall revoke his license or right to  
27 operate for life.

1 SECTION 5.

2 Section 13½ of Chapter 265 of the General Laws is hereby  
3 repealed.

1 SECTION 6.

2 Section 28 of Chapter 266 is hereby amended by inserting at the  
3 end:

4 (d) Whoever knowingly uses a motor vehicle without authority  
5 of the owner shall be punished as follows:

6 (1) First offense: The defendant shall be imprisoned in the jail or  
7 house of correction for not less than 30 days but not more than 2  
8 years, or fined not less than \$50 but not more than \$500 or both.

9 (2) Second offense: The defendant shall be imprisoned in jail or  
10 house of correction for not less than 30 days but not more than 2½  
11 years, or state prison for not more than 5 years, or fined not less than  
12 \$1000, or both.

13 (3) Third offense within 5 years: The defendant shall be impris-  
14 oned in jail or house of correction for not less than 6 months but not  
15 more than 2½ years, or state prison for not less than 2½ years but not  
16 more than 5 years, or a fine of not less than \$200 but not more than  
17 \$1,000, or both.

18 Upon a conviction of this subsection the registrar shall revoke the  
19 license or right to operate as follows:

20 (a) First offense: 1 year

21 (b) Subsequent offense: 3 years

1 SECTION 7.

2 Section 28(a) if Chapter 266 is hereby amended by inserting  
3 subsection (d) as follows:

4 (e) Persons convicted of using a motor vehicle without authority  
5 under the provisions of paragraph (a) of section 28 shall be liable in

6 a civil action to the owner of such vehicle, if it is recovered, for all  
7 towing and storage charges necessitated and all property damage  
8 caused to said vehicle by such use without authority.

1 SECTION 8.

2 Section (2) (a) of Chapter 90 is hereby amended by striking from  
3 lines 742, 743, 744, and 745 the following:

4 Or upon a bet or wager or in a race, or whoever operates a motor  
5 vehicle for the purpose of making a record and thereby violates any  
6 provision of section seventeen or any regulation under section eigh-  
7 teen.

1 SECTION 9.

2 Section 17B of Chapter 90 is hereby amended by inserting in  
3 line 8 after the word “and” the following:

4 by imprisonment for not less than 2 weeks but not more than 2  
5 years.

1 SECTION 10.

2 Section 17B of Chapter 90 is hereby amended by inserting in  
3 line 11 after the word “and” the following:

4 by imprisonment in a jail or house of correction for not less than  
5 30 days but not more than 2½ years, or state prison for not more  
6 than 5 years.

1 SECTION 11.

2 Section 22(c) of Chapter 90 is hereby amended by striking the  
3 words, “state or country” in line 51 and inserting the following:

4 Jurisdiction

1 SECTION 12.

2 Chapter 266 of the General Laws is hereby amended by adding  
3 the following:

4 Section 29A —

5 (60) No person shall remove an abandoned or stolen motor  
6 vehicle on a public way as defined in section 1 of chapter 90 without  
7 the express consent of the owner of such vehicle or without the  
8 written permission of the police department. The owner or operator  
9 of a motor vehicle that is designed to carry or tow another vehicle  
10 shall be licensed for that specific purpose or as a towing service.

11 The owner of any machine that is designed to crush, mutilate or  
12 destroy a motor vehicle, whether the machine be mobile or affixed  
13 permanently, shall have that machine listed with the registry of  
14 motor vehicles.

15 If the owner or agent of a salvage or junk yard transports crushed  
16 or mutilated vehicles without the commonwealth for purposes of  
17 resale, the operator of the transporting vehicle shall carry a list of the  
18 vehicles being transported, and a copy of such list shall be forwarded  
19 to said registrar.

20 (61) Any person convicted under this section shall be imprisoned  
21 for not less than 2 years, a fine of not less than \$1,000, or both.

22 (62) Any person convicted under this section shall forfeit, to the  
23 registrar, any license issued which is related to such violation.